

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

CRYSTAL KRUEGER, an individual on behalf of herself and others similarly situated,

Plaintiff,

V.

## ALASKA AIRLINES, INC.,

Defendant.

## CLASS ACTION

Case No. 2:22-CV-01777-JCC

**DEFENDANT ALASKA AIRLINES,  
INC.'S MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, MOTION FOR  
JUDGMENT ON THE PLEADINGS**

NOTED: JANUARY 19, 2024

## ORAL ARGUMENT REQUESTED

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Defendant Alaska Airlines, Inc. (“Alaska”) hereby moves to dismiss Plaintiff Crystal Krueger’s First Amended Complaint (“FAC”) (ECF No. 40) pursuant to Federal Rule of Civil Procedure 12(b)(1), or in the alternative Rule 12(c), because her claims are preempted by the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.*

## **INTRODUCTION**

Plaintiff alleges that the policies and practices applicable to Alaska’s Flight Attendants—which are established by the nationwide collective bargaining agreement (“CBA”) between Alaska and the Association of Flight Attendants (“AFA”)—fail to pay minimum and overtime wages, and deprive putative class members of the opportunity to take meal and rest periods required by Washington law. *E.g.*, FAC ¶¶ 6.6–6.12. Alaska disagrees. It maintains that the uniform, complex compensation system that AFA negotiated for all of its members, whether located in Washington or not, fully compensates Flight Attendants who are based at Seattle-Tacoma International Airport (“SEA”) and reside in Washington for the time that they work throughout the United States and internationally. Those rules likewise permit those employees to take meal and rest periods while they are working—including when they are onboard Alaska’s flights.

These disagreements implicate disputes over the meaning of the CBA that can only be resolved through interpretation of the CBA’s provisions, and thus, Plaintiff’s claims are preempted by the RLA and must be pursued in arbitration. *See Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252–53 (1994). As the Ninth Circuit has held, “state law causes of action that depend upon the interpretation of CBAs are preempted because the interpretation or application of existing labor agreements are the exclusive jurisdiction of the arbitral bodies created by the RLA.” *Air Transp. Ass’n of Am. v. San Francisco*, 266 F.3d 1064, 1076 (9th Cir. 2001). Accordingly, even where a claim is predicated entirely on state law, it is preempted if the factfinder would be required to resolve any question of contract interpretation. *E.g., Firestone v. S. Cal. Gas Co.*, 219 F.3d 1063, 1065 (9th Cir. 2000).

1       That is exactly the situation here. Plaintiff's claims would require a factfinder to interpret  
 2 the CBA's provisions—which control the terms and conditions of employment for Plaintiff and  
 3 the putative class members. For example, to determine whether Alaska's pay structure constitutes  
 4 a “piece rate”—an issue that must be resolved and that the FAC admits is an open dispute (*see,*  
 5 *e.g.*, FAC ¶¶ 6.5–6.12)—a factfinder would have to interpret the CBA's complex scheme of  
 6 compensation provisions that dictate how Flight Attendants are paid. Each of Plaintiff's claims  
 7 also depend on determining when and/or how long each employee was required to work—which  
 8 cannot be accomplished without interpreting the CBA's complex duty, scheduling, and reporting  
 9 provisions. *See, e.g.*, *Wisc. Cent. Ltd. v. Shannon*, 516 F. Supp. 2d 917, 922 (N.D. Ill. 2007), *aff'd*,  
 10 539 F.3d 751, 758 n.3 (7th Cir. 2008) (state-law claims were preempted because determining when  
 11 employees are required to be “on duty” depends on interpretation of the CBA).

12       Likewise, Plaintiff's overtime, meal-, and rest-period claims require determining each  
 13 employee's “regular rate” of pay, which would require interpreting the CBA's pay provisions to  
 14 assess the nature of the compensation, the context in which it was paid, and ultimately whether it  
 15 must be included as part of that “regular rate.” *See, e.g.*, *McKinley v. Southwest Airlines Co.*, 680  
 16 F. App'x 522, 524 (9th Cir. 2017) (unpublished) (state-law claim preempted because calculating  
 17 airline employee's regular rate of pay required CBA interpretation).

18       Finally, it would be impossible to determine whether Flight Attendants are afforded  
 19 adequate meal- and rest-break opportunities without interpreting the express and implied terms on  
 20 that topic—which incorporate the unique demands of airline operations, industry safety practices,  
 21 and federal aviation safety requirements. *See Blackwell v. SkyWest Airlines, Inc.*, No. 06-cv-0307,  
 22 2008 WL 5103195, at \*11–12 (S.D. Cal. Dec. 3, 2008) (state-law meal and rest period claims  
 23 necessarily require interpretation of CBA, including airline safety practices and customs, and were  
 24 therefore preempted).

25       For each of these reasons, and as discussed in detail below, Plaintiff's claims are preempted  
 26 by the RLA and should be dismissed.

## **PROCEDURAL BACKGROUND**

Plaintiff filed a putative class action on behalf of all Flight Attendants based at SEA who are residents of Washington. (ECF No. 1-2). Alaska removed that action to this Court, (ECF No. 1), this Court denied Plaintiff's Motion to Remand, (ECF No. 21), and the Ninth Circuit rejected Plaintiff's request to challenge that ruling, (ECF No. 37). On October 4, 2023, Plaintiff filed her FAC. (ECF No. 40).

## **FACTUAL BACKGROUND**

Alaska is an international airline. Declaration of Carmen Williams (“Williams Decl.”) ¶ 3. Alaska’s Flight Attendants are represented by AFA, which has negotiated a nationwide CBA that covers all Alaska Flight Attendants. Williams Decl. ¶ 2 & Ex. 1. While Alaska has six Flight Attendant bases, including in Alaska, California, Oregon, and Washington, they are permitted to reside anywhere in the world. Williams Decl. ¶ 3. Further, due to the interrelated structure of Alaska’s network, each of Alaska’s Flight Attendants must be available to work in hundreds of domestic (state, county, and local) and international (country, provincial, and local) jurisdictions under the same scheduling and corresponding pay rules. Williams Decl. ¶ 4 & Ex. 1. For these reasons (among others), the CBA sets forth the terms and conditions of employment for Alaska’s Flight Attendants no matter where they are based, reside, or work. *See* Williams Decl. ¶ 4.

The CBA's scheduling and reserve provisions, for example, explain that Flight Attendants may be awarded either a "bid line" (sometimes also referred to as a regular, fly, or flying line) that consists only of scheduled flights, or a reserve line that consists of reserve availability periods during which a Flight Attendant may be assigned to work a flight as needed. Williams Decl., Ex. 1 §§ 10, 11. They further address how schedules for Flight Attendants are created using Alaska's Preferential Bidding System, the Company's right to change schedules, and what happens when flights are delayed or cancelled. *E.g., id.* §§ 10, 11, 21.

The CBA also addresses how Flight Attendants are paid. That includes Alaska's Trip(s) for Pay ("TFP") system, in which Flight Attendants receive a certain number of credits based on

1 the non-stop mileage for a particular flight (1 TFP per 243 miles; 0.1 additional TFP for each 40-  
 2 mile increment above 243 miles). *Id.* § 21.E.<sup>1</sup> The TFP for each assignment, combined with “Step  
 3 Rates” based on an employee’s seniority and other premium pay multipliers results in the  
 4 employee’s “Trip Rate,” *i.e.*, their compensation for a particular flight. *Id.* § 5-4. Those Trip  
 5 Rates, combined with contractual minimums and guarantees, additional compensation for  
 6 performing certain types of work, and various bonuses, constitute their total monthly  
 7 compensation. Williams Decl. ¶ 20. Reserve Flight Attendants, who are subject to additional  
 8 compensation terms, receive the greater of a monthly minimum guarantee, a set TFP value per  
 9 availability period, or the value of the flights they work when called from reserve—in addition to  
 10 and/or in combination with various premiums and increases. Williams Decl., Ex. 1 § 11.G.1.

11 In addition to the CBA’s express terms, there are also so-called “implied” terms that have  
 12 arisen pursuant to past practice. Williams Decl. ¶ 7. Moreover, the CBA’s terms have also been  
 13 interpreted and clarified through dozens of Letters of Agreement (“LOA”), Memoranda of  
 14 Understanding, settlement agreements, and arbitration awards that have the same force as the  
 15 CBA’s text and are considered part of the overall agreement. *Id.* ¶ 8.

16 One such LOA—the “Flight Attendant Onboard Breaks LOA”—concerns meal and rest  
 17 breaks for Flight Attendants while onboard Alaska’s aircraft. *Id.* ¶ 24 & Ex. 4 at 1. As that LOA  
 18 explains, Alaska has maintained a longstanding practice of allowing Flight Attendants to take  
 19 breaks while working onboard Alaska’s flights. *Id.*, Ex. 4 at 1. It further codifies that past practice,  
 20 providing that Flight Attendants may take a 10-minute break on any flight with a “block time” (an  
 21 industry term referring to when “the aircraft leaves the blocks at the gate under its own power for  
 22 purposes of flight until it blocks in at the gate at the completion of the flight” (*id.*, Ex. 1 § 5-1)), of  
 23 2.5 hours and a 30-minute break on any flight with a block time over 4 hours. *Id.*, Ex. 4 §§ 6.d.–  
 24 7. It also describes how and when those breaks may be taken consistent with employee seniority  
 25

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26 <sup>1</sup> The parties’ TFP compensation system is nearly identical to the one negotiated by Southwest Airlines and  
 its flight attendants and, based on this, is a commonly accepted practice in the aviation industry. Williams Decl. ¶ 22.

and, most importantly, the need to maintain the safety of Alaska's passengers, employees, and operations through compliance with the standards set forth in Alaska's manuals and the federal aviation safety regulations. *Id.* §§ 1–6.c. In addition, Alaska's Flight Attendants can also take breaks during which they can eat, rest, and relax while they are at an airport prior to boarding flights and in between assignments, as well as when they are deadheading—*i.e.*, traveling between assignments. Williams Decl. ¶ 29 & Ex. 1 § 10.X.9.

## LEGAL STANDARD

Alaska moves to dismiss Plaintiff's FAC pursuant to Rule 12(b)(1) or, in the alternative, under Rule 12(c).<sup>2</sup> A court should dismiss a claim under Rule 12(b)(1) if the party asserting jurisdiction fails to meet its burden of establishing subject-matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). When considering a motion under Rule 12(b)(1), the Court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning its jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

Courts evaluate Rule 12(c) and 12(b)(6) motions under the same standard. *Dworkin v. Hustler Mag. Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Accordingly, “a court must assess whether the complaint ‘contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In doing so, “[c]ourts routinely take judicial notice of the governing collective bargaining agreement where necessary to resolve issues of preemption.” *Johnson v. Sky Chefs, Inc.*, No. 11-CV-05619-LHK, 2012 WL 4483225, at \*1 n.1 (N.D. Cal. Sept. 27, 2012); *see also*, *e.g.*, *Rorebeck v. Franciscan Health*, No. 3:18-CV-05423, 2019 WL 1436661, at \*1 n.1 (W.D. Wash. Apr. 1, 2019) (same).

<sup>2</sup> This Court has held that RLA preemption is properly raised in a Rule 12(b)(1) motion to dismiss. *E.g., Gallerson v. BNSF Ry. Co.*, No. C15-5821 BHS, 2016 WL 772926, at \*2 n.1 (W.D. Wash. Feb. 29, 2016). Other circuits, however, have treated this as a nonjurisdictional issue. *See Beckington v. American Airlines, Inc.*, 926 F.3d 595, 607 n.7 (9th Cir. 2019) (collecting cases on each side of the circuit split, while not reaching the issue). That distinction is immaterial here and thus Plaintiff's FAC may be dismissed under either Rule 12(b)(1) or 12(c).

## **ARGUMENT**

## I. HAWAIIAN AIRLINES PREEMPTION

Congress's goal in passing the RLA was to avoid disruptions to interstate commerce caused by labor disputes. 45 U.S.C. § 151a. The RLA likewise protects the right of employees to form and join unions, and for those employees to bargain collectively through their chosen representative. *Id.* § 152, Fourth. To accomplish these goals, the RLA establishes "a comprehensive framework for resolving labor disputes," *Hawaiian Airlines*, 512 U.S. at 252, by requiring arbitration of all disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions," 45 U.S.C. § 153, First(i). Thus, the RLA requires that all "disputes concerned with 'duties and rights created or defined by' the collective bargaining agreement" must be "resolved only through the RLA." *Alaska Airlines, Inc. v. Schurke*, 898 F.3d 904 (9th Cir. 2018) (en banc) (quoting *Hawaiian Airlines*, 512 U.S. at 258). In other words, federal courts lack jurisdiction over disputes concerned with a CBA. *Consol. Rail Corp. v. Ry. Labor Execs. Ass'n*, 491 U.S. 299, 303, 306–07 (1989); *see also Hawaiian Airlines*, 512 U.S. at 253.

State-law claims are thus preempted if they “involv[e] the interpretation or application of existing labor agreements” entered into pursuant to the RLA. *Hawaiian Airlines*, 512 U.S. at 256. Commonly known as *Hawaiian Airlines* preemption, claims are preempted where the right (1) was “created by” the CBA, or (2) exists independently of the CBA but is nevertheless “substantially dependent on analysis of” the CBA. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 394 (1987) (citation omitted).

The state-law claims in this case are preempted under the second type of *Hawaiian Airlines* preemption because they are “substantially dependent” on analyzing the Alaska-AFA CBA. The core question is whether “evaluation of the [state law] claim is inextricably intertwined with consideration of the terms of the labor contract.” *Firestone*, 219 F.3d at 1065 (alteration in original) (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985)). Where determining

1 either liability or remedy would require interpretation of the CBA’s terms (including implied terms  
 2 based on practice, usage and custom) the claim is preempted and must be dismissed so that they  
 3 can proceed through the RLA’s channels. *See, e.g., Int’l Bhd. of Elec. Workers v. Hechler*, 481  
 4 U.S. 851, 862 (1987); *Allis-Chalmers*, 471 U.S. at 218 & n.12.

5 In *Schurke*, the Ninth Circuit reiterated that preemption applies where there is an “active”  
 6 dispute over the meaning of the CBA’s terms. 898 F.3d at 921. Thus, a claim is not preempted if  
 7 the connection to the CBA is purely “hypothetical,” or the contractual terms are so clear and  
 8 unambiguous that the court would merely have to “‘consider,’ ‘refer to,’ or ‘apply’” those  
 9 provisions. *Id.* at 921–22 (quoting *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102,  
 10 1108 (9th Cir. 2000); *Cramer v. Consol. Freightways Inc.*, 255 F.3d 683, 690 (9th Cir. 2001)).  
 11 Because the parties in *Schurke* agreed on the meaning of “every relevant provision in the CBA”  
 12 and only disputed how to interpret Washington law, the court held there was no CBA term that  
 13 would conceivably have to be interpreted to resolve the plaintiff’s claim and thus *Hawaiian*  
 14 *Airlines* preemption did not apply. *Id.* at 922, 926–27.

15 As other courts have observed, *Schurke* “did not purport to overrule any past preemption  
 16 cases.” *West v. Alaska Airlines, Inc.*, No. 3:18-CV-00102-SLG, 2018 WL 6424705, at \*15 (D.  
 17 Alaska Dec. 6, 2018). Rather, *Schurke* repeated the analytical framework articulated in *Hawaiian*  
 18 *Airlines* and other preemption cases that formed the basis for *Wisconsin Central, McKinley,*  
 19 *Blackwell*, and other cases cited by Alaska in this motion. *See Schurke*, 898 F.3d at 922.<sup>3</sup>

20 Moreover, since *Schurke* was decided, the Ninth Circuit and district courts in this circuit  
 21 have continued to apply *Hawaiian Airlines* preemption consistent with historical precedents,  
 22 finding state-law claims preempted where they are “inextricably intertwined” with a CBA’s terms.

23  
 24 <sup>3</sup> *See, e.g., Adames v. Executive Airlines, Inc.*, 258 F.3d 7, 12 (1st Cir. 2001) (citing *Livadas* to note that  
 25 “[s]tate law claims requiring only consultation with the CBA, versus actual interpretation, should not be  
 26 extinguished”); *Wisc. Cent.*, 539 F.3d at 758 (requiring more than a “mere ‘glance’” to the CBA for RLA preemption  
 (citation omitted)); *McKinley v. Southwest Airlines Co.*, No. CV 15-02939-AB (JPRx), 2015 WL 2431644, at \*8 (C.D.  
 Cal. May 19, 2015) (“[W]hen the terms of the CBA are so clear that there is absolutely no danger of inconsistent  
 interpretations, RLA preemption is unnecessary.”), *aff’d*, 680 F. App’x 522 (9th Cir. 2017).

1 For example, in *Columbia Export Terminal, LLC v. International Longshore & Warehouse Union*,  
 2 23 F.4th 836 (9th Cir. 2022), *cert. dismissed*, 142 S. Ct. 2094 (2022),<sup>4</sup> the Ninth Circuit held that  
 3 a claim alleging that employees had furnished inaccurate timesheets was preempted because “a  
 4 host of CBA provisions” relating to employee work and compensation needed to be interpreted to  
 5 determine “whether employees can claim all of their compensable hours in their weekly  
 6 timesheets.” *Id.* at 844–45. The court explained that those issues were not “merely ‘speculative’  
 7 or ‘hypothetical,’” but rather were “intrinsic to [the] claims,” thus triggering preemption. *Id.* at  
 8 845; *see also, e.g.*, *Rorebeck v. Franciscan Health*, No. 3:18-CV-05423, 2019 WL 1436661, at \*5  
 9 (W.D. Wash. Apr. 1, 2019) (finding, because the CBA contained several terms relevant to  
 10 evaluating one element of the plaintiff’s claim, the claim “cannot be evaluated without considering  
 11 the CBA” and was thus preempted).

12 Further, applying *Schurke*, the Ninth Circuit has reaffirmed that preemption applies where  
 13 the defendant has pointed to specific terms in the CBA that the court would need to interpret to  
 14 resolve the plaintiff’s claims—even if the plaintiff disclaims any reliance on or dispute over those  
 15 terms. *See Marquez v. Toll Global Forwarding*, 804 F. App’x 679, 681 (9th Cir. 2020)  
 16 (unpublished) (holding that plaintiff’s meal- and rest-period claims were preempted under *Schurke*  
 17 because the court would necessarily have to interpret the CBA’s terms governing when employees  
 18 could take breaks, despite the fact that the plaintiff argued he was not relying on the CBA and no  
 19 interpretation would be required).

20 As discussed in detail below, Plaintiff’s claims are preempted because they are both  
 21 “inextricably intertwined” with the CBA’s provisions and the parties have an active dispute over  
 22 the meaning of the CBA’s terms. Plaintiff’s claims thus should be dismissed.

23  
 24  
 25       <sup>4</sup> While *Columbia Export Terminal* arose under the Labor-Management Relations Act (“LMRA”), its holding  
 26 is instructive here since “the RLA and LMRA § 301 preemption standards are ‘virtually identical’ in purpose and  
 function.” *Schurke*, 898 F.3d at 913 n.1.

1           **II. PLAINTIFF'S CLAIMS ARE PREEMPTED BY THE RLA.**

2           Plaintiff's claims require interpretation of the CBA and are thus preempted by the RLA.  
 3           First, the Court will need to determine whether Alaska's compensation scheme is a "piece rate" to  
 4           evaluate her minimum wage, overtime, and rest-break claims. Because this will require  
 5           interpretation of the CBA's compensation provisions, those claims are preempted. Second, each  
 6           of Plaintiff's claims will require the Court to interpret the CBA's duty provisions. Third, her  
 7           claims cannot be resolved without interpreting the CBA to determine each employee's "regular  
 8           rate" of pay. Finally, her meal- and rest-period claims require interpretation of express CBA terms  
 9           and implied terms arising through past practice—including the specific LOA that addresses  
 10           onboard meal and rest breaks.

11           **A. Plaintiff's minimum wage, overtime, and rest-period claims are preempted  
 12           because determining whether Alaska's pay system is a "piece rate" requires  
 13           interpretation of the CBA.**

14           Plaintiff's rest-break, minimum wage, and overtime claims are inextricably intertwined  
 15           with the CBA, because each claim is intertwined with the CBA's compensation formula. Each of  
 16           these claims turns on whether Flight Attendants' compensation is "on a piecework basis," *see, e.g.*,  
 17           FAC ¶ 6.5, which is also known as pay by "piece rate." But determining whether Alaska's  
 18           compensation system is a piece rate cannot be done without interpreting the CBA; thus, the RLA  
 19           requires Plaintiff's claims to proceed in arbitration. *Hawaiian Airlines*, 512 U.S. at 256.

20           Plaintiff herself clearly expects this Court to determine whether Alaska's compensation  
 21           system in a piece rate. *Compare, e.g.*, FAC ¶¶ 1.2, 4.11, *with id.* ¶¶ 4.18, 6.6. That cannot be  
 22           accomplished without interpreting the CBA's complex compensation provisions, some of which  
 23           are based on the distance of a Flight Attendant's scheduled flight,<sup>5</sup> offer additional compensation  
 24           based on how long an employee works,<sup>6</sup> combine TFP with other factors,<sup>7</sup> or contains minimums,

25           

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 26           <sup>5</sup> Williams Decl., Ex. 1 § 21.E.

<sup>6</sup> *E.g., id.* §§ 8.K., 8.F., 22.A., 30.C.

<sup>7</sup> *E.g., id.* §§ 9.D., 9.E., 21.G., 21.H., 21.I., 21.J., 21.R., 21.T.

1 guarantees, and pay-protection terms that provide compensation regardless of whether and/or how  
 2 much an employee actually works.<sup>8</sup> Because each of these provisions must be taken into account  
 3 to determine whether Alaska's system is a piece rate, Plaintiff's claims that depend on that  
 4 determination are preempted.

5 **B. Plaintiff's minimum wage and overtime claims require interpretation of the  
 6 CBA to determine how long Flight Attendants worked.**

7 Plaintiff claims that the TFP compensation system negotiated for by her union fails to pay  
 8 Flight Attendants for the full time that they work. FAC ¶¶ 4.18, 6.8–6.12. According to Plaintiff,  
 9 she and the putative class members are required to be on duty at Sea-Tac “between one and two  
 10 hours prior to the first flight of their shift.” *Id.* ¶ 4.5. Plaintiff alleges that Flight Attendants,  
 11 “[a]fter checking in,” are “on-duty” and “must be ready to board alternate flights within a matter  
 12 of minutes whenever they are at the airport if requested to do so.” *Id.* ¶ 4.7. And this duty period  
 13 allegedly continues after the flight lands. *Id.* ¶¶ 4.16–4.17.

14 Alaska disputes these contentions and believes that Flight Attendants are fully  
 15 compensated for the work they perform. Resolving those issues, however, necessarily requires  
 16 determining how long Flight Attendants are required to work and what they are paid for that time.  
 17 That determination is deeply intertwined with the CBA.

18 Section 8.D. of the CBA provides:

19 An on-duty period will commence at the time a Flight Attendant is required to  
 20 report for duty or the actual reporting time, whichever is later. ***Initial report time  
 21 at the Sequence Home Domicile will be one (1) hour prior to scheduled departure***  
 22 and at out-stations forty-five minutes (:45) prior to scheduled departures. A duty  
 23 period will ***terminate fifteen (:15) minutes after*** final block arrival at the Sequence  
 24 Home Domicile and fifteen (:15) minutes after block arrival of a flight at an out-  
 25 station.

26 Williams Decl., Ex. 1 § 8.D. (emphases added); *see also id.*, Ex. 3 at 1. Under Alaska's  
 27 interpretation, the earliest a Flight Attendant is required (and permitted) to be on duty prior to their  
 28 first flight is one hour before the scheduled departure time—not between one and two hours, as

<sup>8</sup> E.g., *id.* §§ 21.D., 21.M.

1 Plaintiff claims. Williams Decl. ¶ 14 & Ex. 2 at 2. And it ends 15 minutes after their last flight at  
 2 their home domicile or at an outstation airport (unless there are extenuating circumstances).

3 Only after determining whose interpretation is right (Alaska's or Plaintiff's), can the Court  
 4 evaluate Plaintiff's minimum wage and overtime claims. Under Washington law, employees are  
 5 entitled to compensation for only the time they are "authorized or required by the employer to be  
 6 on duty." WAC 296-126-002(8). As such, Plaintiff's allegations claim compensation for up to an  
 7 hour of time that—according to Alaska's interpretation—Flight Attendants are not entitled to be  
 8 paid. The parties therefore have an active dispute over the meaning of this CBA term. Because  
 9 this is the case, those claims are preempted by the RLA under *Schurke*. See 898 F.3d at 921; see  
 10 also *Columbia Exp. Terminal, LLC v. ILWU-PMA Pension Fund*, No. 20-CV-08202-JSW, 2023  
 11 WL 3510377, at \*4 (N.D. Cal. May 16, 2023) (claim preempted under *Schurke* because it required  
 12 evaluation of when employees were authorized to work).

13 Alaska disagrees also with Plaintiff's other allegations concerning when employees must  
 14 be paid. Plaintiff seems to assume that Flight Attendants are always "on-duty" when subject to  
 15 Alaska's rules, including when on reserve, and that the TFP system does not compensate them for  
 16 all of that time. E.g., FAC ¶ 4.18. But not all job-associated duties count toward an employee's  
 17 work hours under Washington law. For example, "on-call" time is not included in the "hours  
 18 worked" calculation. Wash. Dep't Lab. & Indus., Admin. Policy ES.C.2 § 9 (last revised July 19,  
 19 2021), available at [https://lni.wa.gov/workers-rights/\\_docs/esc2.pdf](https://lni.wa.gov/workers-rights/_docs/esc2.pdf).

20 It is impossible to resolve this dispute without interpreting the CBA. Indeed, as the  
 21 Washington Supreme Court has explained in articulating the multi-factor analysis to determine  
 22 whether on-call time must be compensated, "whether waiting time constitutes compensable  
 23 working time is a question of fact which involves consideration of the agreement between the  
 24 particular parties." *Chelan Cnty. Deputy Sheriffs' Ass'n v. Chelan Cnty.*, 109 Wash. 2d 282, 293  
 25 (1987). That is especially so here. The CBA's provisions regarding reserve assignments contain  
 26 more than 12 pages of rules that govern everything from how long reserve Flight Attendants have

1 to report to their assignment and when they may be given an assignment, among many others.  
 2 Williams Decl., Ex. 1 § 11. Under those rules and associated past practices, Flight Attendants may  
 3 do as they please while on a general reserve assignment (so long as they do not violate federal  
 4 safety regulations by, for instance, consuming alcohol within the 10-hour period prior to when  
 5 they could be called to work a flight). Williams Decl. ¶ 18 & Ex. 1 § 11.D.1. At other times,  
 6 however, like when they are on Airport Standby, they are subject to considerably more restrictions.  
 7 *Id.* & Ex. 1 § 11.F. A factfinder would have to interpret those rules to determine whether each  
 8 type of reserve period must be counted toward a Flight Attendant's work hours.

9 Analogous cases confirm that Plaintiff's claims are preempted. In *Wisconsin Central*, the  
 10 court rejected the contention that it would need to merely "consult[]" the CBA to determine how  
 11 many hours employees must be paid for. 516 F. Supp. 2d at 923. Instead, it explained that the  
 12 claims were preempted because "[d]etermining whether [the carrier's] employees worked a  
 13 particular number of hours and what pay they received is not a matter of simply looking at their  
 14 pay stubs, but instead requires interpretation and application of various provisions contained in the  
 15 CBAs." *Id.* at 924. Similarly, the Third Circuit held that it would be "impossible" to evaluate  
 16 claims "without interpreting" the CBA to determine "whether the workers are 'required by the  
 17 employer to be on the premises of the employer, to be on duty, or to be at the prescribed work  
 18 place'" at times the plaintiff alleged they should have been paid. *Penn. Fed'n of Bhd. of Maint. of*  
 19 *Way Emps. v. Nat'l R.R. Passenger Corp. (Amtrak)*, 989 F.2d 112, 115 (3d Cir. 1993) (citation  
 20 omitted); *see also, e.g., Adames*, 258 F.3d at 13–15 (overtime claim and claim for uncompensated  
 21 work time preempted); *Burgos v. Executive Air, Inc.*, 914 F. Supp. 792, 796–97 (D.P.R. 1996)  
 22 (same). As those cases show, where—as here—the claims require determining how long  
 23 employees were required to work and how much they were paid for that time, that analysis would  
 24 be "impossible" without interpreting the CBA's duty provisions.

25 For each of these reasons, the RLA preempts Plaintiff's minimum wage and overtime  
 26 claims, and they should be dismissed.

1           **C. Plaintiff's meal- and rest-period claims require interpretation of the CBA to**  
 2           **determine whether and when breaks are required.**

3           Plaintiff alleges that Alaska does not provide its Flight Attendants with meal and rest  
 4           periods as required by Washington law. FAC ¶¶ 4.13, 4.15, 4.20–4.21, 6.2–6.7. Those  
 5           requirements provide that employees must be allowed to take a 30-minute meal period that begins  
 6           “no less than two hours nor more than five hours from the beginning of the shift” and a second  
 7           meal period when they work “three or more hours longer than a normal work day.” WAC 296–  
 8           126-092(1), (3). Employees must also be allowed to take a 10-minute rest period, or its equivalent  
 9           in “intermittent rest periods,” for each 4 hours of work time, which “shall be scheduled as near as  
 10           possible to the midpoint of the work period.” *Id.* §§ (4), (5).

11           The timing aspects of these requirements make them impossible to apply without  
 12           interpreting the CBA’s terms. As noted above, the CBA contains detailed provisions regarding  
 13           when Flight Attendants are on duty. Interpreting those provisions is necessary to determine “the  
 14           beginning of the shift” and ascertain when meal and rest periods must be scheduled and permitted.  
 15           Faced with similar issues, courts have routinely found meal- and rest-period claims preempted. In  
 16           *Adames*, the court held that because the state law specified *when* a meal period was to be taken,  
 17           applying that law would require interpretation of the CBA’s duty provisions and the carrier’s  
 18           industry-specific practices to determine whether a meal period was required. 258 F.3d at 14–15.  
 19           So too here. Plaintiff’s meal- and rest-period claims should thus be dismissed.

20           In addition, Plaintiff’s meal-period claim is preempted because determining whether and  
 21           when Flight Attendants must be afforded a second meal break would require a separate interpretive  
 22           analysis. An employee must be afforded a second meal period when they have worked “three or  
 23           more hours longer than a normal work day.” WAC 296-126-092(1), (3). The Department of Labor  
 24           & Industries has advised that “[a] ‘normal work day’ is the shift the employee is regularly  
 25           scheduled to work.” Wash. Dep’t Lab. & Indus., Admin. Policy ES.C.6.1 § 5 (last revised Dec. 1,  
 26           2017), *available at* [https://lni.wa.gov/workers-rights/\\_docs/esc6.1.pdf](https://lni.wa.gov/workers-rights/_docs/esc6.1.pdf).

1       The CBA, however, does not provide for “a normal work day.” Instead, it includes a web  
 2 of scheduling, duty, and assignment provisions that dictate when Flight Attendants are required to  
 3 work. The scheduling terms, for example, allow Flight Attendants to express preferences,  
 4 including the type of work they want to do, when they want to work, what days off they want, and  
 5 how long they want their assignments to be. Williams Decl., Ex. 1 § 10.M. (listing more than 40  
 6 individual preferences that Flight Attendants may express). There are also specific provisions that  
 7 permit Flight Attendants to ask to work reduced duty periods through the “Low-Bid Option,” *id.*  
 8 § 10.Q., or work significantly more through a “Long Stage Length Duty Period,” *id.* § 10.DD.  
 9 Those preferences are then taken into consideration by Alaska’s Preferential Bidding System—a  
 10 complex software system that creates monthly schedules—and work is assigned based on  
 11 seniority, preferences, and availability. Williams Decl. ¶¶ 10–11. Each of those preferences, and  
 12 how a Flight Attendant chooses to rank or combine them, directly affects Flight Attendants’  
 13 schedules and total duty time on any given day. As a result, Flight Attendant schedules can—and  
 14 often do—vary greatly from day-to-day, week-to-week, and month-to-month. *Id.* ¶ 12. Moreover,  
 15 the CBA’s duty provisions set a 10.5-hour maximum limit on the duty time a Flight Attendant is  
 16 scheduled to work. *Id.*, Ex. 1 § 8.E. But even that limit is not absolute. Alaska can, for instance,  
 17 exceed that limit if it reassigns a Flight Attendant pursuant to the CBA’s reassignment provisions.  
 18 *Id.* Likewise, Flight Attendants may waive that limit if they bid on certain assignments like the  
 19 Long Stage Length Duty Period. *Id.*; *see also id.* § 10.DD.2.d.; 14 C.F.R. § 121.467.

20       As such, determining a “normal work day” would require interpreting those aspects of the  
 21 CBA to divine what Alaska and the AFA intended the normal work day to be—to the extent that  
 22 even exists for these employees. These claims, which are bound up in a complex and negotiated  
 23 CBA, are just the type that Congress intended to be left to the RLA’s resolution scheme. *Hawaiian*  
 24 *Airlines*, 512 U.S. at 252.

1                   **D. Plaintiff's overtime, meal-period, and rest-period claims require**  
 2                   **interpretation of the CBA to determine the “regular rate” of pay.**

3                   Plaintiff's overtime, meal, and rest break claims cannot be resolved without determining  
 4                   each employee's “regular rate” of pay. Determining the “regular rate” for Plaintiff and each of the  
 5                   putative class members would require interpretation of the compensation provisions contained in  
 6                   the Alaska-AFA CBA. This case is thus identical to numerous others finding state-law claims  
 7                   preempted on this basis. *E.g., McKinley*, 680 F. App'x at 524 (state-law claim preempted where  
 8                   determining “regular rate” would require CBA interpretation); *Adames*, 258 F.3d at 15; *Blackwell*,  
 9                   2008 WL 5103195, at \*12; *Wisc. Cent.*, 516 F. Supp. 2d at 923; *Fitz-Gerald v. SkyWest Airlines, Inc.*, 155 Cal. App. 4th 411, 420–21 (2007).

10                  Washington's overtime law requires employees be paid “at a rate not less than one and  
 11                  one-half times the *regular rate*” “for a workweek longer than forty hours.” RCW § 49.46.130(1)  
 12                  (emphasis added). As such, “[p]rior to calculating overtime pay, it is necessary to determine the  
 13                  employee's regular rate of pay.” Wash. Dep't Lab. & Indus., Admin. Policy ES.A.8.1 § 3 (last  
 14                  revised Apr. 6, 2023), *available at* [https://www.lni.wa.gov/workers-rights/\\_docs/ESA81.pdf](https://www.lni.wa.gov/workers-rights/_docs/ESA81.pdf).  
 15                  Likewise, where an employer fails to “allow[]” for the statutorily required meal and/or rest periods,  
 16                  *see* WAC 296-126-092(1), (4)—as Plaintiff alleges in this case, FAC ¶¶ 6.2–6.7—an employee  
 17                  may claim compensation for each missed break at his or her regular rate of pay. *Wash. State*  
 18                  *Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175 Wash. 2d 822, 831 (2012) (rest periods); *Pellino v.*  
 19                  *Brink's Inc.*, 164 Wash. App. 668, 690 (2011) (meal periods).

20                  Where employees—such as Plaintiff—do not have a set hourly rate, “the regular rate of  
 21                  pay may be determined by dividing the amount of compensation received per week by the total  
 22                  number of hours worked during that week.” WAC 296-128-550. Not all “compensation,”  
 23                  however, counts for purposes of this calculation. Rather, “[t]he regular rate includes total  
 24                  compensation earned in the pay period, *excluding certain payments*.” Admin. Policy ES.A.8.1 § 5  
 25                  (emphasis added). In particular, overtime payments, premium pay for working on the weekend or  
 26                  “other special days,” certain bonuses, “Payment for Non-working Hours,” paid leave, and “Show-

1 up and Call-back Pay,” are all forms of pay that “are not included when determining regular rate.”  
 2 *Id.* Consequently, determining each employee’s “regular rate” requires a factfinder to examine:  
 3 (1) the forms of compensation paid to that Flight Attendant; (2) the circumstances in which each  
 4 payment was made; and (3) how the applicable rate was calculated.

5 This type of in-depth examination necessarily requires interpreting the Alaska-AFA CBA  
 6 since it defines the forms of compensation paid to covered employees, including Plaintiff and the  
 7 putative class. This includes dozens of terms regarding pay premiums, increases, multipliers, per  
 8 diems, money for uniforms, and pay for weather delays, mechanical issues, and cancellations—  
 9 just to name a few—on a flight-by-flight and Flight Attendant-by-Flight Attendant basis, as  
 10 different terms apply depending on what happens during a specific flight or other assignment.  
 11 Williams Decl. ¶¶ 20–21; *see also*, e.g., *id.* Ex. 1 §§ 8 (over-duty pay, additional pay for waived  
 12 rest, pay for reduced overnight rest, pay for reduced rest between assignments), 9 (“Junior  
 13 Assignment” pay, premium open time pay), 10.W. (pay for scheduling errors), 13.D. (money for  
 14 uniforms, coats, and boots), 14.H. (vacation and PTO pay), 15.H. (bereavement pay), 16 (pay for  
 15 sick leave and workers’ compensation), 21 (step rates, minimum pay rules, standard and non-  
 16 standard TFP calculations, holiday pay, position pay adjustments, pay for international flights,  
 17 delay pay, pay protection due to mechanical, weather, or other operational issues, stranded pay,  
 18 pay for flying greater than scheduled, over-duty pay, productivity payments, additional pay for  
 19 payroll errors, sit pay, pre-boarding pay, deadhead pay), 22.A. (per diem pay), 24.A. (pay for jury  
 20 duty), 30.C. (training pay), 33.C. (compensation when working on charter flights).

21 Take, for example, the pay increases provided to Flight Attendants who work on their  
 22 scheduled days off. Flight Attendants are guaranteed a certain number of days off per month.  
 23 Williams Decl., Ex. 1 § 10.E.1. However, because the CBA provides that Flight Attendants bid  
 24 on their schedules through Alaska’s Preferential Bidding System, their schedules—including what  
 25 days they have off—vary on a daily, weekly, and monthly basis. When Alaska assigns Flight  
 26 Attendants to work on a scheduled day off or they pick up certain assignments in “open time” on

1 an off day, they may be entitled to extra pay. Williams Decl., Ex. 1 §§ 9.D. (2.5-times pay where  
 2 required by Company to work on a day off), 9.E. (1.5-times pay where Flight Attendant works  
 3 “premium open time”). According to the Department of Labor & Industries, “extra compensation”  
 4 that is at least 1.5 times is excluded from the “regular rate” calculation, if paid for work on “regular  
 5 days of rest.” Admin. Policy ES.A.8.1 § 5.2. Those CBA provisions certainly provide “extra  
 6 compensation” of at least 1.5 times. But because Flight Attendants’ schedules—and days off—  
 7 fluctuate, it is unclear whether this compensation is for work on a “regular day of rest.” Resolving  
 8 that issue would thus require interpreting the CBA’s various scheduling, minimum days off, and  
 9 compensation provisions to determine whether and when Alaska and AFA intended these  
 10 employees to have “regular” rest days.

11 The CBA’s minimums, guarantees, and pay protection provisions present even thornier  
 12 issues of interpretation. Alaska’s Flight Attendants receive several pay guarantees, including Duty  
 13 Period Guarantee for each duty period in a given sequence; Average Duty Period Guarantee based  
 14 on the number of duty periods in a sequence; Extended Overnight Rule, which provides additional  
 15 minimum pay for each scheduled or actual period of time in which a Flight Attendant is  
 16 “completely free of duty” from 1:00 AM to 11:00 PM during a sequence; and Multiday Sequence  
 17 Minimum Pay, which provides additional pay when a Flight Attendant has fewer duty periods than  
 18 calendar days in certain multiday flight sequences. Williams Decl., Ex. 1 § 21.D. In addition,  
 19 reserve Flight Attendants receive a “monthly guarantee” based on the number of reserve  
 20 availability periods they are assigned each month and are paid the “greater of” that guarantee or  
 21 the TFP they actually fly or are credited. *Id.* § 11.G. Moreover, numerous other pay provisions  
 22 throughout the CBA incorporate and rely on those guarantees. For example, additional pay for  
 23 Flight Attendants that voluntarily waive rest following the end of a sequence is paid “above  
 24 guarantee”—meaning it is paid in addition to the Flight Attendant’s guarantee. *Id.* §§ 8.F., 8.K.,  
 25 9.E.

1       A factfinder would need to interpret each of these pay-protection terms to determine  
 2 whether related payments fall within the “Show-up and Call-back Pay” exception and should thus  
 3 be excluded when calculating regular pay. Under that exception, compensation is not credited  
 4 toward overtime pay due and “may be excluded from the regular rate” if (1) an agreement provides  
 5 “for a stated number of hours pay,” (2) “the employee is not provided with the expected amount  
 6 of work,” and (3) “the employee works only part of the hours but is paid for the entire number of  
 7 hours in the agreement.” Admin. Policy ES.A.8.1 § 5.7.

8       Determining whether payments pursuant to these CBA provisions are excludable under  
 9 this exception would require extensive CBA interpretation. A factfinder would, for instance, have  
 10 to interpret the minimum, guarantee, and pay-protection provisions—as well as the CBA’s  
 11 scheduling, minimum days off, and duty provisions—to determine whether they provide for a  
 12 certain number of hours of pay. It would then need to assess whether each of the minimum,  
 13 guarantee, and pay-protection provisions address situations in which a Flight Attendant is not  
 14 given the expected amount of work, look at each instance where they were paid to determine if the  
 15 employee worked some or none of the expected hours, and then figure out how to apportion those  
 16 payments between the hours that employee either worked or did not work on that occasion.

17       This is further complicated by the fact that several of the CBA’s minimum pay provisions  
 18 have been subject to arbitration between Alaska and AFA, and resulted in awards that clarify the  
 19 rules regarding those terms and how the minimums must be applied. *See* Williams Decl. ¶ 8 &  
 20 Ex. 1 § 10-2 ¶ 9 (Addendum) (referencing and incorporating arbitration awards). In addition,  
 21 Flight Attendants receive the “greater of the ‘scheduled or actual’” time—which themselves have  
 22 complicated meanings. *Id.*, Ex. 1 § 21.V. (providing that “actual” time is based on the flight’s  
 23 “block time”). A factfinder would thus have to interpret those arbitration awards and related  
 24 definitions to determine whether pay under those minimum provisions counts. *See, e.g., Marquez*,  
 25 804 F. App’x at 681 (affirming dismissal, on preemption grounds, of rest-period claim because  
 26 court would need to interpret industry terms); *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832

1 F.3d 1024, 1035–36 (9th Cir. 2015) (claims preempted where court would need to define terms in  
 2 the CBA). These are just a few examples of CBA interpretative issues that would be put upon the  
 3 factfinder to resolve Plaintiff’s overtime, meal-, and rest-period claims.

4 Faced with similar, albeit much less complex, compensation systems, courts have routinely  
 5 found state-law claims preempted where they require a factfinder to determine an employee’s  
 6 regular rate of pay. In *McKinley*, the Ninth Circuit held that the plaintiff’s claim for overtime  
 7 under California law was preempted because determining the employee’s compensation and  
 8 regular rate of pay necessarily implicated the CBA, including its shift-trade and premium  
 9 provisions. 680 F. App’x at 524. As the Court explained:

10 The District Court therefore correctly determined that “[i]n order to assess  
 11 Plaintiff’s broadly-alleged claim, the Court would have to examine each form of  
 12 pay provided by the CBA, determine when that pay was due, and then decide  
 13 whether the pay should have been included in Plaintiff’s regular rate.” Thus, the  
 14 District Court also properly held that since the resolution of the claim requires  
 15 interpretation of the CBA, the complaint is preempted.

16 *Id.* (citation omitted). Put differently, the claim was preempted not merely because it asked  
 17 whether the pay rate complied with state law, but rather because the claim required determining  
 18 how that rate was *computed*—which depended on interpretation of the CBA. *Id.*

19 The court reached a similar conclusion in *Blackwell*. There, the plaintiff alleged that  
 20 SkyWest failed to pay minimum wage and overtime, and to provide meal and rest periods. 2008  
 21 WL 5103195, at \*2. The court dismissed those claims as preempted, holding that:

22 Given the many applicable pay rates, categories, and differentials, any attempt to  
 23 determine whether, when, and how much compensation is owed to Blackwell  
 24 necessarily requires an interpretation of the CBA’s provisions.

25 *Id.* at \*12. Moreover, the court explained that state-law overtime claims in particular fall into the  
 26 category of claims that are “inextricably intertwined” with the CBA, “at least where the CBA  
 27 addresses ‘those same subjects and the meaning of the statutory language as applied to the terms  
 28 of the CBA is unclear.’” *Id.* at \*13 (quoting *Adames*, 258 F.3d at 12).

1       And in *Adames*, the First Circuit dismissed similar claims brought by a group of flight  
 2 attendants because “it would be impossible to assess the remedy, payment at twice the hourly rate,  
 3 without ‘interpreting the Agreement to establish what the applicable ‘regular’ rate would be.’” 258  
 4 F.3d at 15; *see also, e.g.*, *Burgos*, 914 F. Supp. at 797 (same); *Wisc. Cent.*, 516 F. Supp. 2d at 923  
 5 (overtime claim preempted because “the CBAs contain numerous provisions governing base pay,  
 6 premium pay, vacation pay, sick leave, personal leave, meals, lodging, and other fringe benefits  
 7 that would have to be interpreted to determine the ‘regular rate’”); *Fitz-Gerald*, 155 Cal. App. 4th  
 8 at 420–21.

9       The same is true here. Plaintiff expressly alleges that under the TFP system, “Plaintiff and  
 10 members of the putative class do not receive 1.5 times their regular rate of pay for each hour they  
 11 are on duty beyond 40 hours per week.” FAC ¶ 4.19; *see also id.* ¶¶ 4.18, 6.11–6.12. Alaska once  
 12 again disagrees. But regardless who’s right, resolving that dispute necessarily requires interpreting  
 13 the CBA’s terms which is at least as—and really much more—complex than those in the cases  
 14 cited above. Her claims are thus preempted. *Schurke*, 898 F.3d at 921.

15       For these reasons, determining Flight Attendants’ regular rate of pay, and resolving the  
 16 parties’ disputes about it, would require interpreting the CBA. Plaintiffs’ claims are thus  
 17 preempted and should be dismissed.

18       **E. Plaintiff’s meal- and rest-period claims require interpretation of express  
 19 terms and implied terms that have developed through past practice.**

20       Plaintiff’s meal- and rest-period claims are preempted for the additional reason that they  
 21 would require a factfinder to interpret the express terms of the Flight Attendant Onboard Breaks  
 22 LOA. Those express terms aside, the factfinder also would need to evaluate implied terms that  
 23 have arisen through the parties’ past practice, a task the RLA gives exclusively to arbitrators. *See,*  
 24 *e.g.*, *Bhd. of Locomotive Engineers & Trainmen (Gen. Comm. of Adjustment, Cent. Region) v.*  
 25 *Union Pac. R.R. Co.*, 879 F.3d 754, 759 (7th Cir. 2017) (“Wading through . . . past practices, is a  
 26 job for the arbitrator.”); *cf. Kane v. Matson Navigation Co., Inc.*, 645 F. Supp. 3d 942, 949 (N.D.

1 Cal. 2022) (examining industry customs that define seaman's ordinary job duties would require  
 2 CBA interpretation).

3 As discussed above, Alaska and AFA are parties to an LOA concerning onboard meal and  
 4 rest breaks. This LOA has the same force as the parties' CBA and any need to interpret its  
 5 provisions likewise results in preemption.<sup>9</sup> As acknowledged in that LOA, Alaska has a  
 6 "longstanding past and current practice" of providing Flight Attendants with opportunities to take  
 7 meal and rest breaks while onboard flights, during which they may "consume food and/or  
 8 beverages." Williams Decl., Ex. 4 at 1. This includes breaks of at least 10 minutes for each flight  
 9 that has a block time of 2.5 hours or longer, and at least 30 minutes for every flight with a block  
 10 time over 4 hours. *Id.* § 6.d.

11 The LOA further specifies how and when those breaks may be taken consistent with  
 12 employee seniority, airline safety, and the need to comply with federal aviation regulations. For  
 13 example, it provides that:

- 14     • "Flight Attendants may take breaks while onboard aircraft on all Company flights,  
       provided that the breaks do not interfere with prescribed safety or service duties." *Id.* § 1.
- 16     • "Such breaks may not be taken during boarding, sterile Flight Deck, prescribed  
       service, or deplaning." *Id.* § 2.
- 18     • "If an emergency exists or as safety-related duties and Federal regulations require,  
       a Flight Attendant on break must resume the responsibilities associated with their  
       assigned position." *Id.* § 4.
- 20     • "The breaks taken by different Flight Attendants during a flight must be equal in  
       duration, coordinated among the Flight Attendant crew, and offered in seniority  
       order." *Id.* § 6.a.

23 Plaintiff's meal- and rest-period claims are inextricably intertwined with, and require  
 24 interpretation of, these LOA provisions. For example, a factfinder would need to interpret whether

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 26     <sup>9</sup> See, e.g., *Bowcock v. Cont'l Airlines, Inc.*, No. CIV.A. H-10-02372, 2010 WL 4812969, at \*3 (S.D. Tex.  
       Nov. 19, 2010) (claim preempted where "the court would have to examine and interpret the LOA"), *aff'd*, 432 F.  
       App'x 343 (5th Cir. 2011).

1 and how the LOA’s usage of “block times”—the way flights’ durations are counted in the CBA—  
 2 equates to hours worked as used in the Washington statute. *Id.* § 6.d.

3 Moreover, Alaska actively disputes Plaintiff’s claim that that “Flight Attendants must  
 4 remain ... **available at all times** to respond to any passenger needs . . . .” FAC ¶ 4.14 (emphasis  
 5 added). This allegation is at odds with Alaska’s understanding of the LOA, which specifies that  
 6 when taking breaks, Flight Attendants may display Alaska-provided “laminated cards” “to indicate  
 7 that the Flight Attendant is on an onboard break” and thus not available to assist routine passenger  
 8 needs. Williams Decl., Ex. 4 § 7.c. This active dispute over the meaning of that LOA renders  
 9 Plaintiff’s meal- and rest-period claims preempted. *See Schurke*, 898 F.3d at 921.

10 To the extent Plaintiff seeks to rely on the notion that Flight Attendants may be called on  
 11 to assist in an aviation safety emergency, that too confirms that her claims are preempted. In  
 12 particular, a factfinder would also need to interpret the LOA’s terms limiting Flight Attendants’  
 13 ability to take on-board meal and rest breaks where doing so “interfere[s] with [their] prescribed  
 14 safety or service duties,” and its requirement that Flight Attendants on breaks must “resume their  
 15 responsibilities” “[i]f an emergency exists.” Williams Decl., Ex. 4 §§ 1, 4.

16 In *Blackwell*, for example, the airline argued that the claims were preempted because  
 17 determining whether employees received adequate rest opportunities would require interpreting  
 18 implied terms, past practice, and industry safety practices. *Id.* at \*11. The court agreed:

19 To resolve Blackwell’s meal and rest period claims, this Court would be required  
 20 to interpret the implied terms in the CBA, namely, pertinent federal aviation safety  
 and security mandates.

21 *Id.* at \*14. That holding applies with equal—if not greater—force here: Alaska’s meal- and rest-  
 22 break practices for Flight Attendants flying throughout the United States and internationally have  
 23 not only been informed by those same industry norms and safety standards, but Alaska and AFA  
 24 have entered into an LOA that expressly incorporates those customs and rules.

25 In *Marquez*, the plaintiff alleged that the employer had failed to ensure that plaintiffs had  
 26 adequate opportunities to take meal and rest breaks. 804 F. App’x at 681. Similar to the LOA

1 here, the CBA in *Marquez* contained several terms that limited when employees could take meal  
 2 and rest periods. *Id.*; *see also Marquez v. Toll Glob. Forwarding (USA) Inc.*, No. 18-cv-03054-  
 3 ODW (ASx), 2018 WL 3218102, at \*3 (C.D. Cal. June 28, 2018). As the Ninth Circuit explained  
 4 in affirming dismissal, because evaluating the “claims will require interpretation of several  
 5 [industry] terms of the CBAs” concerning when and under what circumstances employees could  
 6 take breaks, which the employer “actively dispute[d] the meaning of” in the context of the  
 7 plaintiff’s claims, those claims were preempted under *Schurke*. *Marquez*, 804 F. App’x at 681  
 8 (citing *Schurke*, 898 F.3d at 921). The court also rejected the plaintiff’s claim that no interpretation  
 9 would be required—finding that “resolution of [the] claims will necessar[ily] require interpretation  
 10 of terms of the CBAs that restrict [plaintiff’s] and the other drivers’ ability to take rest breaks.”  
 11 *Id.*

12 Precisely the same is true here. The parties disagree whether Flight Attendants are  
 13 permitted to take adequate breaks under the terms of the LOA. Resolving that dispute “will  
 14 necessar[ily] require interpretation” of those provisions. *Id.*; *cf. also Camarena-Regalado v. S.*  
*15 Cal. Permanente Med. Grp.*, No. LACV22206010JAKJPRX, 2023 WL 6216708, at \*8 (C.D. Cal.  
 16 Sept. 25, 2023) (claim that required “apply[ing] ‘the industrial common law’” preempted (quoting  
 17 *Kobold*, 832 F.3d at 1046)). As such, Plaintiff’s claims are preempted.

18 Flight Attendants may also take meal and rest breaks before boarding Alaska’s aircraft, at  
 19 airports between flights, and while deadheading between assignments—whether those aircraft,  
 20 airports, or flights are within Washington or not. Williams Decl. ¶ 29; *see also id.*, Ex. 1 § 10.X.9  
 21 (when deadheading, Flight Attendants will be provided a “complimentary meal on board any flight  
 22 operating when there is a food option available for purchase”); *id.*, Ex. 5 at 1 (same). Determining  
 23 whether those opportunities comply with Washington’s meal- and rest-period requirements  
 24 likewise requires analysis of Alaska’s past practice and rules. This too confirms that Plaintiff’s  
 25 meal- and rest period claims are preempted.

## **CONCLUSION**

For the foregoing reasons, Plaintiff's claims are preempted and should therefore be dismissed pursuant to Rule 12(b)(1) or, in the alternative, under Rule 12(c).

Respectfully submitted this 28th day of December, 2023.

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## **CERTIFICATE OF SERVICE**

I certify that on the date noted below I served *Alaska Airlines, Inc.'s Motion to Dismiss Or, In The Alternative, Motion for Judgment On the Pleadings* via the Court's ECF which will send notice to the following:

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